

Robert Fish (SBN: 149711) rfish@fishiplaw.com
Mei Tsang (SBN: 237959) mtsang@fishiplaw.com
Andrew Mar (SBN: 251587) amar@fishiplaw.com
Fish & Associates, PC
2603 Main Street, Suite 1000
Irvine, California 92614-4271
Telephone: 949-943-8300
Facsimile: 949-943-8358

Attorneys for Plaintiff and Counter-Defendant Cyberiansoft
and Cross-Defendant Paul Maximov

Brian M. Ledger (SBN: 156942) bledger@gordonrees.com
Ana Cláudia Guedes (SBN: 244386) aguedes@gordonrees.com
Gordon & Rees, LLP
101 W. Broadway, Suite 1600
San Diego, California 92101
Telephone: 619-696-6700
Facsimile: 619-696-7124

Attorneys for Defendant and Cross-Complainant
The M.M. Primas Group, Inc.

**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

CYBERIANSOFT
Plaintiff,

v.

THE M.M. PRIMAS GROUP, INC.,
AND DOES 1 THROUGH 20
INCLUSIVE,
Defendants.

THE M.M. PRIMAS GROUP, INC.
Counter-Complainant,

v.

CYBERIANSOFT, PAUL MAXIMOV,
AND DOES 1 THROUGH 20
INCLUSIVE,
Counter-Defendants.

Case No.: 8:08-cv-01019-JVS
(MLGx)

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Honorable James V. Selna

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STATEMENT OF GOOD CAUSE

Discovery and trial of this case may involve the exchange of confidential information. Such information may include secret business strategies and financial data that is not available to the public. The parties agree that the disclosure of such sensitive information to the public may be detrimental to their respective commercial interests. Therefore, the parties have agreed to enter into this Protective Order.

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PROTECTIVE ORDER

WHEREAS, in connection with the above-captioned matter, certain information, documents and things containing trade secrets and other confidential business information within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure may be disclosed by the parties and/or nonparties voluntarily and/or in response to discovery demands;

WHEREAS, it would serve the interests of the parties to conduct discovery relating to this proceeding under a Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure;

WHEREAS, the parties have agreed to be bound by the terms of this Stipulation and to present the same for entry as an Order of the Court; and

WHEREAS, the parties agree that nonparties may join in this Protective Order and receive the benefits and be subject to the obligations thereof upon written notice:

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IT IS HEREBY STIPULATED AND AGREED THAT:

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1. This Protective Order shall apply to all information, documents, testimony and things designated CONFIDENTIAL or HIGHLY CONFIDENTIAL -ATTORNEY'S EYES ONLY by the parties, or nonparties, as provided in this

1 Protective Order. As used herein, "Confidential Information" means any
2 information, documents, testimony and things so designated.

3 2. All Confidential Information is provided solely for the purpose of this
4 litigation between the parties and may not be used for any other purpose, except by
5 leave of court upon noticed motion with notice to all interested parties.

6 3. Each affidavit or portion thereof, each deposition transcript or portion
7 thereof, each interrogatory answer or portion thereof, each document or portion
8 thereof, each premise or thing or portion thereof, which is deemed by a party or by
9 a nonparty producing same that discloses Confidential Information will be so
10 identified and labeled as either CONFIDENTIAL or HIGHLY CONFIDENTIAL -
11 ATTORNEY'S EYES ONLY as follows:

12 a. A party or nonparty may designate material CONFIDENTIAL only if
13 it, in concurrence with its counsel and in good faith, deems that a reasonable basis
14 exists for limiting dissemination of the material under the standards of FRCP 26
15 and contains confidential and/or proprietary commercial information that is not
16 generally available to the public.

17 b. A party or nonparty may designate material HIGHLY
18 CONFIDENTIAL - ATTORNEY'S EYES ONLY if it, in concurrence with its
19 counsel and in good faith, deems that disclosure of such material to another person
20 or party would be injurious to the commercial interests of the designating entity
21 under the standards of FRCP 26 and contains highly propriety technical or trade
22 secret or business information so that the risk of improper use or disclosure to
23 another party outweighs the right of that party to review such information.

24 c. In the case of information voluntarily disclosed in these proceedings
25 or disclosed as a result of discovery, the producing party or nonparty will identify
and mark Confidential information at the time of disclosure.

1 d. In the case of a deposition, any party or nonparty may orally designate
2 at the deposition any portion of the testimony as CONFIDENTIAL or HIGHLY
3 CONFIDENTIAL – ATTORNEY’S EYES ONLY subject to the terms of
4 paragraphs 3(a) and 3(b) above. Further, any party or nonparty may further
5 designate any portion of the deposition transcript as CONFIDENTIAL or
6 HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY within 15 days after
7 receipt of the transcript. The party or nonparty making such additional designation
8 shall advise opposing counsel and the Court Reporter of the additional designation
9 by letter making reference to the specific pages and exhibits to be so designated.
10 The Court Reporter shall then conform all materials in his or her possession to
11 reflect such confidentiality designation and bind (or re-bind if necessary)
12 separately those portions of the testimony and/or exhibits designated as
13 Confidential Information and shall mark the face of the separately bound transcript
14 containing such confidential testimony and/or exhibits CONFIDENTIAL
15 PURSUANT TO COURT ORDER or HIGHLY CONFIDENTIAL PURSUANT
16 TO COURT ORDER - ATTORNEY'S EYES ONLY, as appropriate.

17 4. Inadvertent failure to designate Confidential Information as such
18 prior to disclosure, production or response will not prevent a subsequent
19 confidentiality designation by letter promptly sent after discovery of such
20 inadvertent failure, provided that any disclosure made by the receiving party prior
21 to receipt of the letter shall not be a violation of this Protective Order, nor shall the
22 receiving party incur liability for use or disclosure of the information prior to the
23 receipt of such letter.

24 5. Unless and until the Court rules that any material so identified as
25 CONFIDENTIAL or HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY
is not, in fact, worthy of treatment as such and should be disclosed beyond the

1 limits permitted by this Protective Order, access, copying or dissemination of
2 information, documents and things so identified shall be limited to:

3 a. Outside Counsel of Record and their partners, associates, and their
4 employees (including stenographic, clerical and paralegal employees), and outside
5 copy services whose functions require access to such Confidential Information and
6 who agree in writing to be bound by the terms of this Protective Order;

7 b. Independent experts or consultants for a party, and their clerical
8 employees who are not and were not employees of, or related in any way to, the
9 parties or their affiliates, and whose advice, consultation and/or testimony are
10 being or will be used by the parties in connection with preparation for trial of this
11 action and/or any motions or appeals connected with the action. However, at least
12 ten (10) days prior to the disclosure of Confidential Information under this
13 paragraph: (1) such persons must be identified in writing to each party¹ in the
14 action; (2) the resume of the expert or consultant shall be provided to each party in
15 the action; and (3) the expert or consultant executes Exhibit A; and (4) a copy of
16 Exhibit A is provided to each party in the action. If any party objects to the
17 disclosure of such information to said expert or consultant, that party must serve a
18 written objection within 10 days after receipt of all of the information set forth
19 herein. No disclosure of Confidential Information shall occur until all objections
20 are resolved by the parties or by court order, including any appeal of such order.

21 c. Persons appearing for deposition provided that such persons: (1)
22 authored or received such Confidential Information; (2) are established as being
23 knowledgeable of the contents of such Confidential Information prior to the time
24 of his or her testimony; or (3) are a current or former employee of the party (or
25 non-party) that produced the Confidential Information (subject to the right of the

1 producing party to object and move for a protective order prior to the deponent
2 being given access to such Confidential Information).

3 d. The Court and its officers (including court reporters);

4 e. A representative of each party to this action under the same conditions
5 as set forth in paragraph 5(b), except for documents marked by the producing party
6 as **HIGHLY CONFIDENTIAL-ATTORNEY'S EYES ONLY**; and

7 f. Any other person that the parties hereto agree to in writing.

8 6. To the extent Confidential Information is included in any pleading,
9 paper, or other document filed with the Court, the party filing such Confidential
10 Information shall lodge such information under seal and, concurrently therewith,
11 file an Application to file such papers – or the portion containing the Confidential
12 Information – under seal.

13 7. This Protective Order shall not foreclose any of the parties from
14 moving this Court for an order that designated materials are not within the scope of
15 protection afforded by FRCP Rule 26 or that Confidential Information designated
16 as **HIGHLY CONFIDENTIAL - ATTORNEY'S EYES ONLY** should be
17 reclassified as **CONFIDENTIAL**. Further:

18 a. A party does not waive its right to challenge a designation of
19 **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY**
20 by electing not to mount a challenge immediately after the original designation is
21 made;

22 b. A party that elects to initiate a challenge as to confidentiality
23 designation must do so in good faith and must begin the process by conferring
24 directly with counsel for the party, or nonparty, making such designation; and

25 ¹ If a nonparties' Confidential Information is involved, that nonparty shall also be
notified and all of the provisions of this paragraph that apply to parties shall apply
to nonparties as well.

1 c. A party that elects to challenge a confidentiality designation shall do
2 so upon noticed motion in accordance with applicable law and local rules. The
3 party seeking to uphold the confidentiality designation bears the burden of proof
4 and sanctions may be issued at the Court's discretion for any designation made in
5 bad faith or for any motion made in bad faith.

6 8. This Protective Order shall not prevent any party or nonparty from
7 applying to the Court for relief herefrom or for further and/or additional protective
8 orders, and/or from agreeing between themselves to modification of this Protective
9 Order.

10 9. Subject to the limitations of this Protective Order, Confidential
11 Information identified in accordance with paragraph 3 hereto may be used during
12 discovery, in connection with any motion, at the trial and/or appeal of this action,
13 and for any other purpose as this Court may allow after notice to all parties.

14 10. In the event that a party desires to provide access to Confidential
15 Information hereunder to any person or category of persons not included above, the
16 party desiring to provide access shall move this Court for an order that such person
17 or category of persons may be given access to the Confidential Information under
18 such terms and conditions as the party shall designate in its motion papers. In the
19 event that the motion is granted, such person or category of persons may have
20 access to the Confidential Information provided that such person or persons have
21 first agreed in writing to be bound by the terms of this Protective Order and have
22 signed a copy of Exhibit "A" hereto.

23 11. Within ninety (90) days after final termination of this case, receiving
24 counsel shall return all copies and samples of Confidential Information in its
25 possession, custody or control to counsel for the party who has provided them or
certify destruction thereof. However, a party is not required to destroy deposition

1 transcripts or pleadings containing confidential information provided that it
2 continues to abide by the terms of this Protective Order.

3 12. No copy of any deposition transcript or any portion thereof designated
4 as Confidential Information shall be prepared or furnished by the reporter to any
5 person other than to attorneys of record for the parties. Neither the original nor any
6 copy of any transcript of any deposition taken in this action shall be filed in Court
7 until the time period has elapsed for the designation of portions of the transcript as
8 Confidential Information, unless the transcript and all papers referencing the
9 transcript are filed under seal.

10 13. In the event that a party or nonparty to which Confidential
11 Information has been disclosed receives a discovery request, subpoena, order or
12 other form of compulsory process requiring that it (the "subpoenaed party")
13 produce information, documents, things or other materials that have been
14 designated as Confidential Information, the subpoenaed party shall promptly notify
15 the designating party of the demand. If the designating party elects to resist
16 production of the materials, it shall promptly so notify the subpoenaed party and
17 the latter shall cooperate in affording the designating party the opportunity to
18 oppose or limit production of the materials provided, however, the designating
19 party shall bear all expenses, including attorneys' fees, incurred by the subpoenaed
20 party in connection therewith.

21 14. This Protective Order shall survive the final determination of this
22 action and shall remain in full force and effect after the conclusion of all of the
23 proceedings herein and the Court will retain jurisdiction to enforce its terms and to
24 ensure compliance herewith.

25 15. This Protective Order has no effect upon, and shall not apply to, a
party's use or disclosure of its own Confidential Information for any purpose.
Also, nothing contained herein shall impose any restrictions on the use or

1 disclosure by the Receiving Party of information that: (a) was already known to
2 such party by lawful means prior to its disclosure by the Designating Party in this
3 action; (b) is or becomes publicly known through no fault of the Receiving Party;
4 or (c) is rightfully received by the Receiving Party from a third party which has
5 authority to provide such information and who is without restriction on the use or
6 disclosure of such information.

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8 Respectfully submitted,

9 FISH & ASSOCIATES, PC

10 Dated: July 17, 2009

By: /s/ Andrew Mar

11 Robert D. Fish, Esq.
12 Mei Tsang, Esq.
13 Andrew Mar, Esq.

14 Attorneys for Attorneys for Plaintiff and
15 Counter-Defendant Cyberiansoft and
16 Cross-Defendant Paul Maximov

17 GORDON & REES LLP

18 Dated: July 17, 2009

By: /s/ Ana Cláudia Guedes

19 Brian M. Ledger
20 Ana Cláudia Guedes

21 Attorneys for Defendant/Cross-
22 Complainant THE M.M. PRIMAS
23 GROUP, INC.

24 **IT IS SO ORDERED:**

25 DATED: July 27, 2009



MARC L. GOLDMAN
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

I, _____, state that:

1. My address is _____.

2. My present employer is _____.

3. My present occupation or job description is _____.

4. My past and present business relationships with the party retaining my services are: _____.

5. A copy of my curriculum vitae is attached hereto (if applicable).

6. I have received a copy of the Protective Order in this action signed by the United States District Judge.

7. I have read and understand all of the provisions of the Protective Order.

8. I will hold in confidence and will not disclose to anyone not qualified under the Protective Order and will not use any materials designated **CONFIDENTIAL** or **HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY** which are disclosed to me except as permitted by that Order.

9. Having read the Protective Order, I will comply with all its provisions, including those not explicitly set out in this signed undertaking.

10. I agree to return all **CONFIDENTIAL** and **HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY** materials which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained. I will do this immediately upon receiving a request from the counsel for the party for whom I was employed or retained or, in any event, by no later than thirty days after litigation between the parties has ended.

11. I hereby submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing this Protective Order.

DATED: _____ (Signature)_____